

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 3691 of 2007(M)

PETITIONER:

MOHAMMED KHANI,
41/1320, ARANGHATH ROAD, KOCHI-18.

BY ADV. SRI.P.NARAYANAN

RESPONDENTS:

1. THE STATE OF KERALA,
REP.BY SECRETARY (TAXES),
SECRETARIAT, TRIVANDRUM.
2. THE TAHASILDAR (ASSESSING AUTHORITY
UNDER THE BUILDING TAX ACT),
KANAYANNUR TALUK, ERNAKULAM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF REGISTRERED ASSIGNMENT DEED EXECUTED BY THE PETITIONER IN FAVOUR OF HIS SON K.H.MUNEER.

P2 : COPY OF THE AGREEMENT DATED 05/04/2003 EXECUTED BY THE PETITIONER AND HIS CHILDREN AND THE BUILDER.

P3 : COPY OF PROPERTY TAX RECEIPT DATED 24/02/2005 ISSUED TO THE PETITIONER IN RESPECT OF BUILDING NO. 41/1554A.

P3(a) : COPY OF PROPERTY TAX RECEIPT DATED 24/02/2005 ISSUED TO THE PETITIONER IN RESPECT OF BUILDING NO. 41/1554B.

P3(b) : COPY OF PROPERTY TAX RECEIPT DATED 24/02/2005 ISSUED TO THE K.H.SAJAN IN RESPECT OF BUILDING NO. 41/1554B1.

P3(c) : COPY OF PROPERTY TAX RECEIPT DATED 24/02/2005 ISSUED TO THE K.H.SHAMINA IN RESPECT OF BUILDING NO. 41/1554C1.

P3(d) : COPY OF PROPERTY TAX RECEIPT DATED 24/02/2005 ISSUED TO THE K.H.RUBINA IN RESPECT OF BUILDING NO. 41/1554C.

P3(e) : COPY OF PROPERTY TAX RECEIPT DATED 24/02/2005 ISSUED TO THE K.H.MUNEER IN RESPECT OF BUILDING NO. 41/1554A1.

P4 : COPY OF THE NOTICE NO. B2-4539/05 DATED 17/07/06 ISSUED BY THE 2ND RESPONDENT.

P5 : COPY OF THE REPLY DATED 31/07/06 SUBMITTED BY THE PETITIONER.

P6 : COPY OF THE ORDER NO. B2-4539/05 DATED 12/12/06 PASSED BY THE 2ND RESPONDENT.

P7 : COPY OF THE ASSESSMENT ORDER NO. B2-4539/05 ISSUED BY 2ND RESPONDENT DATED 13/12/06.

P8 : COPY OF THE DEMAND NOTICE NO. B2-4539/05 ISSUED BY 2ND RESPONDENT DATED 13/12/06.

P9 : COPY OF THE PROCEEDINGS NO.B24539/05 DATED 12/12/06 ISSUED BY THE 2ND RESPONDENT DEMANDING LUXURY TAX.

P10 : COPY OF THE CIRCULAR ISSUED BY 1ST RESPONDENT DATED 28/09/90.

P11 : COPY OF INTERIM ORDER IN WP(C) No. 1184/07 DATED 11/01/2007.

P12 : COPY OF THE INTERIM ORDER IN WP(C) No. 735/07 DATED 08/01/07.

// TRUE COPY //

PA TO JUDGE.

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 3691 of 2007

Dated, this the 21st day of August, 2007

J U D G M E N T

Petitioner is challenging Exts.P6 to P9 orders of assessments and demand of building tax in respect of a building consisting of six apartments. Even though petitioner contended that building consists of separate apartments, learned Government Pleader submitted that building consists of partly commercial area and partly residential area. Explanation 2 to Section 2(e) of the Building Tax Act provides for separate assessment for separate apartments, whether it is used for commercial or residential purposes. In the first place, Tahsildar has to ascertain by conducting an inspection as to whether building comprised is of separate apartments and if commercial area is separate, it can be assessed at the applicable rate to it and residential area has to be subject to tax at the rate applicable to it. Since orders are issued without considering the documents, which is said to be available with the petitioner, I dispose of the writ petition granting one more opportunity to the petitioner to produce the agreement, deeds and documents to substantiate his case before the 2nd respondent. The 2nd respondent

will conduct inspection of the building to find out the nature of construction before proceeding with the assessment. Even if building is constructed by the petitioner and later assigned separately, building tax should not be assessed together but should be assessed in petitioner's name, if he is the owner at the time of completion of construction of the building. The 2nd respondent is directed to pass fresh orders within a period of three months from the date of production of a copy of this judgment. As and when fresh orders are passed, he will recall the earlier order. Tax already paid will be adjusted based on revised demand and if no tax is to be paid, the amount paid will be refunded to the petitioner without delay.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)